

1 AMENDMENT TO SENATE BILL 1725

2 AMENDMENT NO. _____. Amend Senate Bill 1725 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Estate and Generation-Skipping
5 Transfer Tax Act is amended by changing Sections 2, 3, 5, 6,
6 7, 8, and 10 as follows:

7 (35 ILCS 405/2) (from Ch. 120, par. 405A-2)

8 Sec. 2. Definitions.

9 "Federal estate tax" means the tax due to the United
10 States with respect to a taxable transfer under Chapter 11 of
11 the Internal Revenue Code.

12 "Federal generation-skipping transfer tax" means the tax
13 due to the United States with respect to a taxable transfer
14 under Chapter 13 of the Internal Revenue Code.

15 "Federal return" means the federal estate tax return with
16 respect to the federal estate tax and means the federal
17 generation-skipping transfer tax return with respect to the
18 federal generation-skipping transfer tax.

19 "Federal transfer tax" means the federal estate tax or
20 the federal generation-skipping transfer tax.

21 "Illinois estate tax" means the tax due to this State
22 with respect to a taxable transfer that--gives--rise--to--a

1 federal-estate-tax.

2 "Illinois generation-skipping transfer tax" means the tax
3 due to this State with respect to a taxable transfer that
4 gives rise to a federal generation-skipping transfer tax.

5 "Illinois transfer tax" means the Illinois estate tax or
6 the Illinois generation-skipping transfer tax.

7 "Internal Revenue Code" means, unless otherwise provided,
8 the Internal Revenue Code of 1986, as amended from time to
9 time.

10 "Non-resident trust" means a trust that is not a resident
11 of this State for purposes of the Illinois Income Tax Act, as
12 amended from time to time.

13 "Person" means and includes any individual, trust,
14 estate, partnership, association, company or corporation.

15 "Qualified heir" means a qualified heir as defined in
16 Section 2032A(e)(1) of the Internal Revenue Code.

17 "Resident trust" means a trust that is a resident of this
18 State for purposes of the Illinois Income Tax Act, as amended
19 from time to time.

20 "State" means any state, territory or possession of the
21 United States and the District of Columbia.

22 "State tax credit" means:

23 (a) For persons dying on or after January 1, 2003 and
24 through December 31, 2005, an amount equal to the full credit
25 calculable under Section 2011 or Section 2604 of the Internal
26 Revenue Code as the credit would have been computed and
27 allowed under the Internal Revenue Code as in effect on
28 December 31, 2001, without the reduction in the State Death
29 Tax Credit as provided in Section 2011(b)(2) or the
30 termination of the State Death Tax Credit as provided in
31 Section 2011(f) as enacted by the Economic Growth and Tax
32 Relief Reconciliation Act of 2001, but recognizing the
33 increased applicable exclusion amount through December 31,
34 2005.

1 (b) For persons dying after December 31, 2005 and on or
2 before December 31, 2009, an amount equal to the full credit
3 calculable under Section 2011 or 2604 of the Internal Revenue
4 Code as the credit would have been computed and allowed under
5 the Internal Revenue Code as in effect on December 31, 2001,
6 without the reduction in the State Death Tax Credit as
7 provided in Section 2011(b)(2) or the termination of the
8 State Death Tax Credit as provided in Section 2011(f) as
9 enacted by the Economic Growth and Tax Relief Reconciliation
10 Act of 2001, but recognizing the exclusion amount of only
11 \$2,000,000.

12 (c) For persons dying after December 31, 2009, the
13 credit for state tax allowable under Section 2011 or Section
14 2604 of the Internal Revenue Code.

15 "Taxable transfer" means an event that gives rise to a
16 state tax credit, including any credit allowable as a result
17 of the imposition of an additional tax under Section 2032A(c)
18 of the Internal Revenue Code.

19 "Transferee" means a transferee within the meaning of
20 Section 2603(a)(1) and Section 6901(h) of the Internal
21 Revenue Code.

22 "Transferred property" means:

23 (1) With respect to a taxable transfer occurring at
24 the death of an individual ~~that results in the imposition~~
25 ~~of federal estate tax~~, the deceased individual's gross
26 estate as defined in Section 2031 of the Internal Revenue
27 Code.

28 (2) With respect to a taxable transfer occurring as
29 a result of a taxable termination as defined in Section
30 2612(a) of the Internal Revenue Code, the taxable amount
31 determined under Section 2622(a) of the Internal Revenue
32 Code.

33 (3) With respect to a taxable transfer occurring as
34 a result of a taxable distribution as defined in Section

1 2612(b) of the Internal Revenue Code, the taxable amount
2 determined under Section 2621(a) of the Internal Revenue
3 Code.

4 (4) With respect to an event which causes the
5 imposition of an additional estate tax under Section
6 2032A(c) of the Internal Revenue Code, the qualified real
7 property that was disposed of or which ceased to be used
8 for the qualified use, within the meaning of Section
9 2032A(c)(1) of the Internal Revenue Code.

10 "Trust" includes a trust as defined in Section 2652(b)(1)
11 of the Internal Revenue Code.

12 (Source: P.A. 86-737.)

13 (35 ILCS 405/3) (from Ch. 120, par. 405A-3)

14 Sec. 3. Illinois estate tax.

15 (a) Imposition of Tax. An Illinois estate tax is
16 imposed on every taxable transfer involving transferred
17 property having a tax situs within the State of Illinois.

18 (b) Amount of tax. The amount of the Illinois estate
19 tax shall be the maximum state tax credit, as defined in
20 Section 2 of this Act, allowable with respect to the taxable
21 transfer reduced by the lesser of:

22 (1) the amount of the state tax credit paid to any
23 other state or states; and

24 (2) the amount determined by multiplying the
25 maximum state tax credit allowable with respect to the
26 taxable transfer by the percentage which the gross value
27 of the transferred property not having a tax situs in
28 Illinois bears to the gross value of the total
29 transferred property.

30 (Source: P.A. 86-737.)

31 (35 ILCS 405/5) (from Ch. 120, par. 405A-5)

32 Sec. 5. Determination of tax situs and valuation.

1 (a) Illinois estate tax.

2 (1) For purposes of the Illinois estate tax, in the
3 case of a decedent who was a resident of this State at
4 the time of death, all of the transferred property has a
5 tax situs in this State, including any such property held
6 in trust, except real or tangible personal property
7 physically situated in another state.

8 (2) For purposes of the Illinois estate tax, in the
9 case of a decedent who was not a resident of this State
10 at the time of death, the transferred property having a
11 tax situs in this State, including any such property held
12 in trust, is only the real estate and tangible personal
13 property physically situated in this State.

14 (b) Illinois generation-skipping transfer tax.

15 (1) For purposes of the Illinois
16 generation-skipping transfer tax, all transferred
17 property from or in a resident trust has a tax situs in
18 this State, including any such property held in trust,
19 except real or tangible personal property physically
20 situated in another state on the date that the taxable
21 transfer occurs.

22 (2) For purposes of the Illinois
23 generation-skipping transfer tax, none of the transferred
24 property from or in a non-resident trust has a tax situs
25 in this State, except that portion of the transferred
26 property that is real or tangible personal property
27 physically situated in this State, including any such
28 property held in trust, on the date that the taxable
29 transfer occurs.

30 (c) Valuation. Except as otherwise expressly provided,
31 for purposes of this Act, the gross value of transferred
32 property shall be its value as finally determined for
33 purposes of the related federal transfer tax, undiminished by
34 any mortgages, liens or other encumbrances upon such

1 transferred property for which the decedent was personally
2 liable.

3 (Source: P.A. 86-737.)

4 (35 ILCS 405/6) (from Ch. 120, par. 405A-6)

5 Sec. 6. Returns and payments.

6 (a) Due Dates. The Illinois transfer tax shall be paid
7 and the Illinois transfer tax return shall be filed on the
8 due date or dates, respectively, including extensions, for
9 paying the related federal transfer tax and filing the
10 related federal return.

11 (b) Installment payments and deferral. In the event
12 that any portion of the federal transfer tax is deferred or
13 to be paid in installments under the provisions of the
14 Internal Revenue Code, the portion of the Illinois transfer
15 tax which is subject to deferral or payable in installments
16 shall be determined by multiplying the Illinois transfer tax
17 by a fraction, the numerator of which is the gross value of
18 the assets included in the transferred property having a tax
19 situs in this State and which give rise to the deferred or
20 installment payment under the Internal Revenue Code, and the
21 denominator of which is the gross value of all assets
22 included in the transferred property having a tax situs in
23 this State. Deferred payments and installment payments, with
24 interest, shall be paid at the same time and in the same
25 manner as payments of the federal transfer tax are required
26 to be made under the applicable Sections of the Internal
27 Revenue Code, provided that the rate of interest on unpaid
28 amounts of Illinois transfer tax shall be determined under
29 this Act. Acceleration of payment under this Section shall
30 occur under the same circumstances and in the same manner as
31 provided in the Internal Revenue Code.

32 (c) Who shall file and pay. The Illinois transfer tax
33 return (including any supplemental or amended return) shall

1 be filed, and the Illinois transfer tax (including any
2 additional tax that may become due) shall be paid by the same
3 person or persons, respectively, who are required to pay the
4 related federal transfer tax and file the related federal
5 return, or who would have been required to pay a federal
6 transfer tax and file a federal return if a federal transfer
7 tax were due.

8 (d) Where to file return. The executed Illinois
9 transfer tax return shall be filed with the Attorney General.
10 In addition, a copy of the Illinois transfer tax return shall
11 be filed with the county treasurer to whom the Illinois
12 transfer tax is paid, determined under subsection (e) of this
13 Section.

14 (e) Where to pay tax. The Illinois transfer tax shall
15 be paid to the treasurer of the county determined under the
16 following rules:

17 (1) Illinois Estate Tax. The Illinois estate tax
18 shall be paid to the treasurer of the county in which the
19 decedent was a resident on the date of the decedent's
20 death or, if the decedent was not a resident of this
21 State on the date of death, the county in which the
22 greater part, by gross value, of the transferred property
23 with a tax situs in this State is located.

24 (2) Illinois Generation-Skipping Transfer Tax. The
25 Illinois generation-skipping transfer tax involving
26 transferred property from or in a resident trust shall be
27 paid to the county treasurer for the county in which the
28 grantor resided at the time the trust became irrevocable
29 (in the case of an inter vivos trust) or the county in
30 which the decedent resided at death (in the case of a
31 trust created by the will of a decedent). In the case of
32 an Illinois generation-skipping transfer tax involving
33 transferred property from or in a non-resident trust, the
34 Illinois generation-skipping transfer tax shall be paid

1 to the county treasurer for the county in which the
2 greater part, by gross value, of the transferred property
3 with a tax situs in this State is located.

4 (f) Forms; confidentiality. The Illinois transfer tax
5 return shall be in all respects in the manner and form
6 prescribed by the regulations of the Attorney General. At
7 the same time the Illinois transfer tax return is filed, the
8 person required to file shall also file with the Attorney
9 General a copy of the related federal return. For individuals
10 dying after December 31, 2005, in cases where no federal
11 return is required to be filed, the person required to file
12 an Illinois return shall also file with the Attorney General
13 schedules of assets in the manner and form prescribed by the
14 Attorney General. The Illinois transfer tax return and the
15 copy of the federal return filed with the Attorney General or
16 any county treasurer shall be confidential, and the Attorney
17 General, each county treasurer and all of their assistants or
18 employees are prohibited from divulging in any manner any of
19 the contents of those returns, except only in a proceeding
20 instituted under the provisions of this Act.

21 (g) County Treasurer shall accept payment. No county
22 treasurer shall refuse to accept payment of any amount due
23 under this Act on the grounds that the county treasurer has
24 not yet received a copy of the appropriate Illinois transfer
25 tax return.

26 (Source: P.A. 86-737.)

27 (35 ILCS 405/7) (from Ch. 120, par. 405A-7)

28 Sec. 7. Supplemental returns; refunds.

29 (a) Supplemental returns. If the State tax credit is
30 increased after the filing of the Illinois transfer tax
31 return, the person or persons required to file the Illinois
32 transfer tax return and pay the Illinois transfer tax shall
33 file a supplemental Illinois transfer tax return. The

1 supplemental return shall be filed and the additional tax
 2 shall be paid in the same place and manner as provided in
 3 Section 6 of this Act. The due date for the supplemental
 4 return and for the payment of the additional tax reported in
 5 the supplemental return shall be no later than 3 months after
 6 the earliest of:

7 (1) the date an amended~~7-related~~ federal return is
 8 filed;

9 (2) the date an increase in the federal transfer
 10 tax is paid or accepted in writing; or

11 (3) the date the Internal Revenue Service issues a
 12 request for evidence of payment of the State tax credit;
 13 or

14 (4) the date that any increase to the taxable
 15 estate is discovered;

16 provided that if the related federal transfer tax may be
 17 deferred or paid in installments, then part or all of the
 18 additional Illinois transfer tax may be deferred or paid in
 19 installments under rules consistent with subsection (b) of
 20 Section 6 of this Act.

21 (b) Refunds. If the state tax credit is reduced after
 22 the filing of the Illinois transfer tax return, the person
 23 who paid the Illinois transfer tax (or the person upon whom
 24 the burden of payment fell) shall file an amended Illinois
 25 transfer tax return and shall be entitled to a refund of tax
 26 or interest paid on the Illinois transfer tax. No interest
 27 shall be paid on any amount refunded.

28 (Source: P.A. 86-737.)

29 (35 ILCS 405/8) (from Ch. 120, par. 405A-8)

30 Sec. 8. Penalties for failure to file tax return or to
 31 pay tax.

32 (a) Failure to file return. In case of failure to file
 33 any return required under this Act with the Attorney General

1 by the due date, unless it is shown that the failure to file
2 is due to a reasonable cause, there shall be added to the
3 amount required to be shown as tax on the return 5% of the
4 amount of that tax (or 5% of the additional tax due in the
5 case of a supplemental return) if the failure is for not more
6 than one month from the due date, with an additional 5% for
7 each additional month or fraction of a month thereafter
8 during which the failure to file continues, not exceeding in
9 the aggregate 25% of the tax or, in the case of a
10 supplemental return, 25% of the additional tax.

11 (b) Failure to pay tax. In the case of failure to pay
12 the amount of tax shown due on any return required under this
13 Act on or before the due date for payment of that tax, unless
14 it is shown that the failure to pay is due to reasonable
15 cause, there shall be added to the unpaid amount of the tax
16 0.5% of that unpaid amount if the failure is for not more
17 than one month from the due date, with an additional 0.5% for
18 each additional month or fraction of a month thereafter
19 during which the failure to pay continues, not exceeding in
20 the aggregate 25% of the unpaid amount.

21 (c) Extensions of Time.

22 (1) Internal Revenue Service Extensions. If the
23 date for filing the related federal return or the date
24 for payment of the related federal transfer tax is
25 extended by the Internal Revenue Service, the filing of
26 the return and payment of the tax imposed by this Act
27 shall be due on the respective date specified by the
28 Internal Revenue Service in granting a request for
29 extension. If the request for extension is granted by
30 the Internal Revenue Service, the person required to file
31 the Illinois transfer tax return shall furnish the
32 Attorney General with a copy of the request for extension
33 showing approval of the extension by the Internal Revenue
34 Service. If a request for extension of time to file the

1 federal return is denied by the Internal Revenue Service,
2 no penalty shall be due under this Act if the return
3 required by this Act is filed within the time specified
4 by the Internal Revenue Service for filing the federal
5 return. If a request for extension of time to pay the
6 federal transfer tax is denied by the Internal Revenue
7 Service, no penalty shall be due under this Act if the
8 tax is paid within the time specified by the Internal
9 Revenue Service for paying the federal transfer tax.

10 (2) Attorney General Extensions. The person or
11 persons required to file the Illinois transfer tax return
12 and to pay the Illinois transfer tax may apply to the
13 Attorney General for an extension of time to file the
14 Illinois transfer tax return or to pay the Illinois
15 transfer tax. The application must establish reasonable
16 cause why it is impossible or impractical to file a
17 reasonably complete return or to pay the full amount of
18 tax due by the due date. The Attorney General may for
19 reasonable cause extend the time for filing the return or
20 paying the tax for a reasonable period from the date
21 fixed for filing the return or paying the tax.

22 (d) Waiver of Penalties.

23 (1) Internal Revenue Service Waiver. If the
24 Internal Revenue Service waives the penalty provided in
25 the Internal Revenue Code for failure to timely file the
26 related federal return or the penalty for failure to
27 timely pay the related federal transfer tax liability,
28 such waiver or waivers shall be deemed to constitute
29 reasonable cause for purposes of this Section.

30 (2) Attorney General Waiver. The Attorney General
31 may waive the penalty or penalties for failure to file or
32 pay for reasonable cause, notwithstanding the failure of
33 the Internal Revenue Service to waive the penalty or
34 penalties for failure to timely file the federal transfer

1 tax return or to pay the federal transfer tax.

2 (Source: P.A. 86-737.)

3 (35 ILCS 405/10) (from Ch. 120, par. 405A-10)

4 Sec. 10. Liens and Personal Liability.

5 (a) Lien for Illinois transfer tax. Unless the Illinois
6 transfer tax is sooner paid in full, the Illinois transfer
7 tax shall be a lien in favor of this State upon the
8 transferred property having a tax situs within this State for
9 10 years from the date of the taxable transfer, or, in the
10 case of Illinois transfer tax subject to deferral or payable
11 in installments, the later of 10 years from the date of the
12 taxable transfer or one year after the last deferred or
13 installment payment may become due. The lien imposed by this
14 Section on the transferred property shall not be valid as
15 against any purchaser, mortgagee, pledgee, or other holder of
16 a security interest for a full and adequate consideration in
17 money or money's worth; provided, however, that any property,
18 consideration or proceeds received as a result of any sale,
19 mortgage, pledge or granting of a security interest shall
20 remain subject to the lien imposed by this Section. In
21 addition, the lien imposed by this Section on the transferred
22 property shall be subject to the exceptions set forth in
23 Section 6324(c)(i) of the Internal Revenue Code as if the
24 lien were a lien imposed by that Section. In no event shall
25 the issuance by the Attorney General of a release of the lien
26 imposed by this subsection be required with respect to the
27 sale, mortgage, pledge, granting of a security interest in,
28 transfer or distribution of transferred property.

29 (b) Special lien for property valued under Section 2032A
30 of the Internal Revenue Code. In the event the Illinois
31 estate tax is reduced as a result of an election under
32 Section 2032A of the Internal Revenue Code, then an amount
33 equal to the additional Illinois estate tax that would be due

1 in the absence of such an election shall be a lien in favor
2 of this State on the transferred property that has a tax
3 situs in this State and is subject to such election. The
4 lien imposed by this subsection shall arise at the time an
5 election is filed under Section 2032A of the Internal Revenue
6 Code and shall continue with respect to such transferred
7 property:

8 (1) until the liability for the Illinois estate tax
9 with respect to such transferred property has been
10 satisfied or has become unenforceable by reason of lapse
11 of time or otherwise; or

12 (2) until it is established to the satisfaction of
13 the Attorney General that no further tax liability may
14 arise under this Act with respect to such transferred
15 property.

16 The lien imposed by this subsection shall not be valid as
17 against any purchaser, mortgagee, pledgee, other holder of a
18 security interest, mechanic's lien, or judgment lien creditor
19 until notice of such lien has been filed as provided by the
20 laws of this State. In regulations prescribed in accordance
21 with Section 16 of this Act, the Attorney General may require
22 that the qualified heir file such notice of lien. Even
23 though notice of said lien has been filed as provided in the
24 preceding sentence, such lien shall be subject to the rules
25 set forth in paragraph (3) of Section 6324A(d) of the
26 Internal Revenue Code as if the lien were a lien imposed by
27 that Section.

28 (c) Personal liability. If the Illinois transfer tax is
29 not paid when due, then the person required to file the
30 related federal return and the transferee of any transferred
31 property having a tax situs within this State shall be
32 personally liable for the Illinois transfer tax, to the
33 extent of such transferred property originally received,
34 controlled or transferred to that person or transferee, less

1 the amount of any expenses or charges against the transferred
2 property, related to the taxable transfer, which have a
3 higher priority of payment under applicable law than the
4 Illinois transfer tax.

5 (d) Collection. The Attorney General shall have the
6 right to sue for collection of the Illinois transfer tax for
7 3 years after the date of the actual filing of the related
8 Illinois transfer tax return with the Attorney General, or,
9 if later, the last date upon which application for refund of
10 the Illinois transfer tax could be filed with the State
11 Treasurer.

12 (e) Waiver of lien and personal liability. If the
13 Attorney General is satisfied that no liability for Illinois
14 transfer tax exists or that the Illinois transfer tax has
15 been fully discharged or provided for, the Attorney General
16 shall issue a certificate releasing all of the transferred
17 property having a tax situs within the State of Illinois from
18 the lien imposed by this Section. Issuance of such
19 certificate shall discharge the person required to file the
20 Illinois ~~related--federal~~ return and any transferee from
21 personal liability for the Illinois transfer tax.

22 (Source: P.A. 86-737.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."